

MASTER FACILITY USE AGREEMENT

between
Arizona Board of Regents
and
City of Flagstaff

This facility use agreement (“Agreement”) is entered into this ____ day of _____, 2010, between the Arizona Board of Regents for and on behalf of Northern Arizona University (“University”), and the City of Flagstaff (“City”). The University and the City may be referred to in this Agreement collectively as the “parties” and singularly as a “party.”

WHEREAS, City operates and maintains public ways, grounds and buildings (“Facilities”) which may be used for special events and desires to permit such use of Facilities under certain terms and upon application by the University; and

WHEREAS, the University desires to use Facilities from time to time for University events;

NOW THEREFORE, the parties agree as follows.

1. Term

The term of this Agreement shall begin October 25, 2010 and end November 30, 2011, unless earlier terminated as provided herein. This Agreement may be renewed upon mutual written consent of both parties for four (4) additional one (1) year periods.

2. Scheduling Facilities

2.1. Subject to the terms and conditions provided herein, University personnel may schedule the use of City facilities for events where alcohol is not served utilizing the Permit Application and Permit Agreement (collectively “City Agreements,” individually “City Agreement”), such City Agreements are attached as Exhibits A, Permit Application, and Exhibit B, Permit Agreement, and are incorporated herein by reference. In the event the terms of this Agreement and any City Agreement conflict, the terms of this Agreement shall govern.

2.2. Events where alcohol will be served are not authorized under this Agreement and shall be contracted through the Northern Arizona University Foundation.

2.3. Termination

Either party may terminate this Agreement by providing the other party thirty (30) days written notice of its intent to terminate. In the event this Agreement is terminated, subsequent permit agreements for use of City facilities may only be signed by University personnel authorized to sign contracts on behalf of the Arizona Board of Regents. A

current list of University representatives authorized by the Arizona Board of Regents to sign contracts can be found at <http://home.nau.edu/comptr/>.

3. Insurance

3.1. The University shall provide proof of Occurrence-type Comprehensive General Liability insurance coverage for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than \$1,000,000 per occurrence; proof of Automobile Liability with a combined single limit of not less than \$1,000,000 if applicable. Insurance shall cover the acts and omissions of University and its agents, employees, volunteers, and invitees. This Section 3.1 sets forth the entire insurance requirement for the University under this Agreement. The University shall not be required to waive subrogation or name City or any other party as additional insured.

3.2. City shall maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of City employees or agents. City shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of University employees, agents, volunteers, and invitees.

4. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

5. Non-discrimination

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

6. Cancellation for Conflict of Interest

The parties agree that this Agreement may be cancelled for conflict of interest in accordance with A.R.S. 38-511.

7. Dispute Resolution

In the event a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809. Before resorting to the procedures specified in Policy 3-809, however, the parties agree first to try in

good faith to resolve the dispute by mediation. Mediation will be self-administered, will take place in Flagstaff, Arizona, and will be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the auspices of the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision is not intended to constitute a waiver of a party's right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

8. Cancellation for Lack of Funding

If the University's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then the University may provide written notice of this to the City and cancel this Agreement without further obligation of the University. Appropriation is a legislative act and is beyond the control of the University.

9. Inspection and Audit

All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the Arizona Board of Regents, the University, the City of Flagstaff, or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this Agreement. Such records shall be produced at Northern Arizona University, or such other location as designated by the University, upon reasonable notice to the City, or at the City upon reasonable notice to the University.

10. Confidentiality Language

The parties acknowledges the University and the City are public entities subject to the provisions of the Arizona Public Records Laws, A.R.S. § 39-121. et seq. In the event that a public records request is received by the University or the City requesting records described as confidential, which the University or the City determines must be disclosed, the University or the City shall notify the other party prior to disclosure.

11. Sudan and Iran

Pursuant to A.R.S. §§35-391.06(A) and 35-393.06(B), City and the University each certifies that it does not have a "scrutinized business operation" in either Sudan or Iran, as that term is defined in ARS §§ 35-391(15) and 35-393(12), respectively.

The undersigned have read the foregoing Agreement and, as duly authorized signatories of their respective entities, hereby agree to be bound by its requirements, terms and conditions.

**The Arizona Board of Regents for and on
Behalf of Northern Arizona University**

City of Flagstaff

By: _____

By: _____

Becky McGaugh, C.P.M.
Director of Procurement

Kevin Burke
City Manager

Attest:

City Clerk

Approved as to form:

City Attorney